

In the United States Court of Federal Claims

No. 97-190T
(Filed: February 3, 2003)

SUCCESSION OF BETTY FELIX
HELIS, by ESTHER HELIS HENRY
and DAVID A. KERSTEIN,
Testamentary Co-Executors,

Plaintiffs,

Estate tax refund;
Calculation of interest
deduction.

v.

THE UNITED STATES,

Defendant.

Jasper G. Taylor III, Fulbright & Jaworski L.L.P., Houston, Texas for
plaintiff.

Mildred L. Seidman, Chief, Court of Federal Claims Section, Tax
Division, United States Department of Justice, for defendant. With her on the
briefs were *Eileen J. O'Connor*, Assistant Attorney General, *David Gustafson*,
Assistant Chief, and *Jennifer Dover Spriggs*, of counsel.

ERRATA

Please substitute the attached page of the Opinion in the above-entitled
case filed on January 8, 2003.

ERIC G. BRUGGINK
Judge

defendant's calculation, the refund should be \$20.3 million.² Because of the importance of the question, and because it was not thoroughly briefed in earlier proceedings, the court granted defendant's request that this issue be reopened. In addition, plaintiff seeks correction of three minor errors in the previous opinion, which defendant does not oppose.

DISCUSSION

Plaintiff's interest in Estate of William G. Helis, A Partnership, qualified as a closely held business under I.R.C. § 6166. This enabled plaintiff to pay the estate tax assessed on the partnership interest in installments over fifteen years. The interest that is due the United States for allowing these deferred payments under § 6166 is distinct from, although similar to, interest assessed under § 6601 on "underpayment, nonpayment, or extensions of time for payment, of tax."

Plaintiff had the choice of either taking an estate tax deduction or an income tax deduction for the interest payments. *See* I.R.C. § 642(g); Rev. Rul. 79-252, 1979-2 C.B. 333 (1979) (allowing post-death interest on an income deficiency to be deducted from an estate as an administration expense). Pursuant to I.R.C. § 2053, plaintiff was allowed to deduct administrative expenses from the value of the estate. We held earlier that, under applicable Louisiana law, this includes interest necessarily incurred in the administration of the estate. *Helis*, 52 Fed. Cl. at 748-49. Plaintiff chose to take the interest deduction on its estate tax return as an administrative expense.³

Defendant does not dispute that interest on borrowing can be a proper administrative expense under I.R.C. § 2053. Instead, defendant disputes whether all of the interest was "actually and necessarily incurred" as required under Treas. Reg. § 20.2053-3(a) (1979). Defendant contends that the unnecessarily paid § 6166 interest will be returned, plus interest, thereby eliminating the deduction in the same amount.

²These amounts must be readjusted in light of subsequent administrative expenses.

³Under I.R.C. § 642(g), this had the effect of precluding the estate from deducting the same items for income tax purposes.